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EXAMINER
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MARCETICH, ADAM M

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack; Ann Louise et al. (US 6719742) in view of Polansky; Herbert et al. (US 4249532).

4. Regarding claims 1, 10 and 11, McCormack discloses a disposable article selected from baby diapers, pull-on diapers, pants or adult incontinence diapers comprising:

[1] a liquid pervious topsheet, a liquid impervious backsheet and an absorbent core positioned between said topsheet and said backsheet (col. 11, lines 41-45, Fig. 5, outer cover 102, topsheet 104, and absorbent core 106 between the outer cover 102 and topsheet 104);

[1] wherein said backsheet comprises at least one polymeric film and at least one nonwoven web (col. 3, lines 28-32, 38-45, Fig. 1, upper or first microporous film layer 12 and second microporous film layer 14);

[1] wherein said polymeric film and said nonwoven web each have two major surfaces (Fig. 1, layers 12 and 14 each having two major surfaces); and

[1] said polymeric film comprises a polymeric film material, and said nonwoven web comprises a polymeric nonwoven web material (col. 3, lines 46-51, first and second microporous films can each comprise microporous breathable films);

[1] wherein at least one of said polymeric film material or of said polymeric nonwoven web material is color-pigmented by one or more pigments mixed therein prior to formation of said polymeric film or said nonwoven web into the polymeric material (col. 3, lines 38-45, second microporous film can be, for example, purple; col. 5, lines 41-48, pigments added by pre-compounding the pigment with the desired resin);

[1] wherein at least one of said polymeric film or said nonwoven web has visually discernible printed ornamental designs (col. 7, lines 8-17, 23-29, 'Baby Objects' bond pattern creating a repeating pattern of bonded regions representative of various identifiable objects);

[1] said polymeric film being joined in an overlaying region across at least part of one of its major surfaces to at least part of an adjacent major surface of said nonwoven web to form said backsheet (col. 3, lines 28-32, embossed regions 16 substantially joining layers together); and

[1] wherein said backsheet in said overlaying region has an L Hunter value on the Hunter scale (col. 6, lines 2-4, Hunter scale):

[1, 10, 11] for darkness/lightness-appearance from 10 to 75(col. 6, lines 31-39, L\* number between 70-80, overlapping the claimed range of 10-75);

[1, 10, 11] an "a" value for red/green-appearance from about -50.0 to about +50.0 and a "b" value for yellow/blue-appearance from about -50.0 to about +50.0 (col. 19-20, table 1, example 1 showing a\* values of -9.83, -9.82 and b\* values of -21.49, -21.42, overlapping the claimed ranges of about -50.0 to +50.0, about -30.0 to +30.0 and about -35.0 to +25.0);

[1, 10, 11] in the areas outside the ornamental designs (col. 16, lines 26-33, stretched, uncalendered multilayer films representing non-embossed regions and therefore outside ornamental designs).

McCormack discloses the invention substantially as claimed, see above. However, McCormack lacks printing as claimed [claim 1]. Polansky discloses an absorbent article and printing process (col. 1, lines 7-16) further comprising

[1] said printed ornamental designs being provided by printing a pigmented ink onto at least one of said major surfaces of at least one of a polymeric film or a nonwoven web (cols. 1-2, lines 58-4, Figs. 1-3, printing design 16 with colors). Polansky provides the advantage of protecting colors within a seal coat. Alternatively, Polansky provides an example of a printing technique routinely used in the absorbent article arts, wherein inks are applied to a substrate to provide coloring. This provides the option of more colors beyond the display of two possible colors disclosed by McCormack.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of McCormack as discussed with the printing as taught by Polansky in order to protecting colors and present more than two colors to a user.

5. Regarding claim 2, McCormack discloses an absorbent article wherein said backsheet in said overlaying region has an opacity from about 55% to about 100% in the areas outside the printed ornamental designs (col. 9, lines 43-48, 56-61, Fig. 3, laminate 30 comprising opaque polymeric sheet 42).

6. Regarding claim 3, McCormack discloses the invention substantially as claimed, see above. However, McCormack lacks printing as claimed [claim 3]. Polansky discloses an absorbent article wherein one of said two major surfaces of said polymeric film and said nonwoven web is a garment facing surface and said discernible ornamental designs are provided by printing on at least one of said garment facing surfaces of said polymeric film or said nonwoven web (cols. 1-2, lines 58-4, Figs. 1-3, design 16 printed on inner side 17 of polyethylene sheet 13). Alternatively, Figs. 1-3, depict design 16 as substantially printed between sheet 13 and paper sheet 14, therefore also printed on paper sheet 14). Polansky provides the advantage of surrounding an ornamental design with a protective layer, preventing colors from running or becoming distorted (col. 2, lines 8-21). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of McCormack as discussed with the printing as taught by Polansky in order to secure printed colors.

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7. Regarding claim 4, McCormack discloses an absorbent article wherein said backsheet comprises a garment facing layer and a body facing layer and said nonwoven web is comprised by said garment facing layer and said polymeric film is comprised by said body facing layer (col. 3, lines 28-32, 38-45, Figs. 1-4, laminate comprising layer 12 and layer 14).

8. Regarding claims 5 and 6, McCormack in view of Polansky discloses the invention substantially as claimed, see above. However, McCormack in view of Polansky is silent to the specific percentage of the major surfaces covered with ornamental designs as claimed [claims 5 and 6]. The property of covered area percentage is interpreted as a result-effective variable, subject to experimentation and testing. A result-effective variable is a parameter which achieves a recognized result. These results are obtained by the determination of optimum or workable ranges of said variable through routine experimentation. The property of covered area percentage achieves masking of waste materials through routine experimentation.

For example, McCormack discloses printing an absorbent article with an embossed design to conceal waste materials (col. 7, lines 30-37, "...employing colors that in effect neutralize the colors within the interior of the article..."). In other words, selecting a coverage percentage is based on the ability of concealing waste materials as seen from the outside of an absorbent article. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the covered area percentage in order to mask a soiled absorbent article. See MPEP

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2144.05(II)(A,B). Also see in re Boesch and Slaney, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

9. Regarding claim 7, McCormack in view of Polansky discloses the invention as substantially claimed, see above. However, McCormack in view of Polansky is silent regarding a distance between a rear end edge and a rear core end edge being about 40 mm as claimed [claim 7]. The property of distance between edges is interpreted as a result-effective variable, subject to experimentation and testing. A result-effective variable is a parameter which achieves a recognized result. These results are obtained by the determination of optimum or workable ranges of said variable through routine experimentation. The property of distance between edges achieves good fit for a baby through routine experimentation. For example, diapers are provided in sizes suitable for fitting infants of different sizes. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the distance between edges in order to fit infants of an average size. See MPEP 2144.05(II)(A,B). Also see in re Boesch and Slaney, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

10. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack; Ann Louise et al. (US 6719742) in view of Polansky; Herbert et al. (US 4249532), further in view of McFarland et al. (US 6096412).



McCormack in view of Polansky discloses the article as discussed above for claim 1. However, McCormack in view of Polansky lacks a half-toning printing process as claimed [claims 8-9].

McFarland discloses a process of printing absorbent articles with a half-toning printing process (column 1, lines 14-24 and column 17, lines 52-60). Examiner notes that the process of halftone printing necessarily involves printing with an opaque ink (online encyclopedia, p. 1, paragraph 3), which is covered by dots to produce the effect of an additional color (online encyclopedia, p. 1, paragraph 2).

A halftone printing process creates the effect of additional colors for a user (McFarland column 17, lines 52-60). The practice of printing within an area of a nonwoven web or major surface as claimed falls within the scope of obviousness, as required to print graphics on different areas of a diaper. McFarland provides the advantage of enhanced resolution, in addition to reducing the number of differently colored inks to create the impression of multiple colors (col. 18, lines 55-67, especially lines 55-58). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of McCormack in view of Polansky as discussed with the half-toning process as taught by McFarland in order to enhance graphic resolution and use fewer inks.

### ***Response to Arguments***

11. Examiner thanks Applicant for clarifying the nature of the invention during the telephone interview 20 August 2008. The amended claims reflect the invention more clearly in light of the interview.

12. Applicant's arguments, see p. 5-11 of 11 filed 25 August 2008 with respect to the rejection(s) of claim(s) 1-11 under 35 USC § 103 over Noda in view of Yeo and Rogers have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made under 35 USC § 103 over McCormack in view of Polansky.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- ❖ Rogers; Wallace S. et al. US 5133707
- ❖ La Wilhelm; Hoa et al. US 6075178
- ❖ Uitenbroek; Duane Girard et al. US 5897541
- ❖ Olson; Christopher Peter et al. US 6297424

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Marcetich whose telephone number is (571)272-2590. The examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/  
Examiner, Art Unit 3761

//Leslie R. Deak//  
Primary Examiner, Art Unit 3761  
23 November 2008